

Chapter 24

ARTICLE II. SPECIAL REGULATIONS

DIVISION 4. *TREE PRESERVATION AND* LANDSCAPING

Sec. 24-86. Statement of intent.

The purpose of this article is to promote the preservation and planting of trees in order to safeguard and enhance residential and commercial real estate values; reduce noise, glare, and heat; conserve energy; buffer noise and wind; mitigate storm water runoff; protect properties from erosion; and provide habitats for wildlife.

These objectives will be realized through regulatory measures which seek to encourage planting of trees and discourage their removal and promote preserving specimen trees. The preservation, installation, and maintenance of plant materials will:

~~The purpose of this section is to promote the public health, safety and welfare by providing for the preservation, installation and maintenance of trees and plant materials which will:~~

- (1) Ensure development which is consistent with the goals of the Comprehensive Plan related to natural resources, environmental and land use standards, Community Character Corridors, and aesthetics;
- (2) Retain the historic and natural character of James City County by reducing the visual impact of signs, parking lots, buildings and structures and protecting, preserving and enhancing its natural physical wooded character with emphasis on preserving the existing tree canopy and other indigenous vegetation and providing such canopy and vegetation where it does not exist;
- (3) Minimize the environmental and land use impacts of developments associated with noise, glare, dust and movement; changes in appearance, character and value of neighboring properties; and effects on air and water quality, stormwater runoff, groundwater recharge and soil erosion by preserving existing tree canopies and indigenous vegetation and restoring such canopies and vegetation and providing other landscape features;
- (4) Promote traffic safety by controlling views and visually defining circulation patterns;
- (5) Provide more comfortable exterior spaces and conserve energy by preserving and providing tree canopies and other landscape features which provide shade and windbreaks; and
- (6) Ensure the location, type, and maintenance of plant materials creates and maintains a safe environment for users of the site.

Sec. 24-87. Administration.

(a) Tree Preservation Plan; when required. A tree preservation plan shall be required for any development that requires a site plan under the provisions of ordinance section 24-143 and. Such a plan shall be submitted at time of application for plan approval. The Tree Preservation Plan should be prepared and approved in accordance with Article 3 Site Plan.

(b) Tree Preservation Plan; who prepares. Tree preservation plans shall be prepared and/or certified by design professionals practicing within their areas of competence as prescribed by the Code of Virginia including certified engineers, architects, landscape architects, and other professionals related to this field.

~~(a)~~(c) *Landscape plan; when required.* A landscape plan is required for any site plan or subdivision plan for development subject to sections 24-98 (f) and (g) and shall be submitted at the time of application for plan approval. The landscape plan shall be prepared and approved in accordance with article III, Site Plan. The landscape plans shall also indicate the location of all existing and planned utilities.

~~(b)~~(d) *Landscape plan; who prepares.* A Virginia registered landscape architect, a member of the Virginia Society of Landscape Designers, or a Certified Virginia Nurseryman with experience preparing planting plans and landscape construction drawings, shall prepare landscape plans for projects that propose a new building or group of new buildings whose building footprint(s) exceeds 2,500 square feet; or propose site improvements which result in the disturbance of 5,000 or more square feet of land area.

~~(e)~~(e) *Plan requirements and determinations.* Where requirements of this section are based on zoning or planning designations, such designations shall be determined by the county zoning district map, Comprehensive Plan and Six-Year Secondary Road Plan and the official planning and zoning documents of the adjoining jurisdiction if applicable. Required landscape areas shall exclude any planned future right-of-way as designated on the Comprehensive Plan, Six-Year Primary or Secondary Road Plan, Peninsula Area Transportation Plan, approved master plan, or any road plan adopted by the board of supervisors.

~~(d)~~(f) *Installation of required landscaping, performance guarantee.* Where a landscape plan is required, landscaping shall be installed and existing trees shall be preserved in conformance with the approved landscape plan. A certificate of occupancy shall not be issued until all landscaping has been installed in accordance with the approved landscape plan unless the installation of any incomplete landscaping is guaranteed as provided in section 24-8.

~~(e)~~(g) *Maintenance of landscaping.* The owner, or his agent, shall be responsible for the maintenance, repair and replacement of all landscaping materials, fences and barriers as may be required by the provisions of this section. All plant materials, including existing trees preserved to meet the requirements of this section, shall be tended and maintained in a healthy growing condition, replaced when necessary, and kept free of refuse and debris. Fences and walls shall be maintained in good repair. Replacement material shall conform to the original intent of the approved landscape plan and any replacement planting shall meet the minimum requirements of this section.

Sec.24-88. Tree Preservation Plan: Submittal requirements.

(a) Tree preservation plans shall be incorporated into clearing plans when required by the County's Chesapeake Bay Preservation ordinance.

(b) Tree preservation plans shall show the following site conditions:

(1) An inventory of all existing trees on the site with a trunk diameter of 24 inches or greater, measured at breast height. Large areas of trees proposed to be preserved can be shown as an area and do not need to be shown as individual trees;

- (2) *An inventory of all trees with a caliper greater than 24 inches that are proposed to be removed;*
- (3) *Any designated outstanding specimen trees;*
- (4) *The location of existing and proposed buffer plantings, street trees and any other landscaping areas required by the zoning ordinance or subdivision ordinance;*
- (5) *All tree protection measures required by section 24-88 of the zoning ordinance drawn to scale at exact locations,*
- (6) *A phased clearing plan when required by section 24-89,*
- (7) *A narrative explaining how only trees necessary for the development of the site are proposed to be removed.*

Sec.24-89. Tree protection and criteria for tree removal for all uses requiring a landscape plan.

- (a) *Standards for tree protection and impervious cover.* Existing mature trees shall be preserved except in impervious areas and impervious cover shall be limited to the extent permitted in the county's Chesapeake Bay Preservation Ordinance. Existing mature and specimen trees shall be integrated into the overall plan of development and shall be preserved so as to promote the intent of this section. The commission or planning director, depending upon the applicable review process, may require that certain mature trees or specimen trees be preserved upon determination that they contribute significantly to the character of the county and that preservation is necessary to satisfy the intent of this section. The purpose of this paragraph is to protect such trees and other amenities which could otherwise be lost due to careless site design or construction. All trees to be preserved shall be protected in accordance with the standards of this section.
- (b) *Tree protection.*
 - (1) All trees to be preserved shall be protected before, during and after the development process in accordance with specifications contained in the *Virginia Erosion and Sediment Control Handbook*. The applicant shall include a conservation checklist for review and approval by the environmental director which shall ensure that the specified trees will be protected in accordance with these specifications.
 - (2) Groups of trees shall be preserved rather than single trees. Trees or groups of trees to be preserved shall be clearly marked in the field.
 - (3) Trees and groups of trees to be preserved shall be enclosed by a substantial, temporary fence or barrier as specified by the environmental director. The location, type, and installation standards for protective tree fencing shall be clearly shown on the site plan. The fence or barrier shall be located and maintained outside the dripline before commencement of clearing or grading. The fencing or barrier shall remain throughout construction and any subsequent grading or excavation unless otherwise approved on a clearing and grading plan. In no case shall materials, debris, fill, vehicles or equipment be stored within this enclosure, nor shall the topsoil layer be disturbed except in accordance with tree protection standards approved as part of the conservation checklist.

- (4) The developer shall be responsible for ensuring these areas are protected in accordance with this section. Where changes from the existing natural grade level are necessary, permanent protective structures, such as tree walls or wells, shall be properly installed in accordance with the *Virginia Erosion and Sediment Control Handbook*, as required by the environmental director.

(c) *Tree removal:*

Outside impervious areas, trees may be removed in accordance with sections 24-96 (e) (2) and (3).

Sec. 24-90. Phased Clearing Plan: Submittal requirements.

“Phased clearing” means the clearing or grading a parcel of land in distinct sections with the stabilization of each phase before the cutting and removal of trees or grading of the next. A phased clearing plan shall be required to be submitted with the tree preservation plan on all sites disturbing greater than 25 acres. The size of each phase will be established at site plan review and as approved by the Planning Director or Development Review Committee (DRC) and the commission for plans meeting the criteria of section 24-147.

Sec. 24-91. General standards.

- (a) *All tree removal shall be limited to the area required for the practical development of the site. No clear cutting shall be permitted except when it can be shown that the removal of vegetation is necessary for the development of the site. Clear cutting is defined as removal of large areas of existing vegetation in areas not necessary for the construction of buildings and or the infrastructure associated with the development.*
- (b) *For properties subject to this ordinance, the Tree Preservation Plan shall show which existing trees will be removed in order to develop the property. No existing tree greater than 24 inches in diameter shall be destroyed unless written approval has been granted by the county during the process of approving the Tree Preservation Plan. Tree removal shall take place before development or construction begins.*
- (c) *This ordinance strongly encourages the planting of trees native to Eastern Virginia and/or adaptable to the coastal conditions and climate of James City County. As a resource for developing tree plans, the Planning Director or his designee shall maintain and make available to the public a list of desirable trees based on their adaptability to the climate of Eastern Virginia.*
- (d) *If any of the trees specified in the Tree Preservation and Planting Plan are severely damaged during construction or should die within 12 months after project completion, the developer or property owner shall replace the trees. Replacement must happen within six months at a ratio of 1:1 for trees up to 12 inch caliper, 2:1 for trees greater than 12 inches but less than 24 inches, and 3:1 for trees greater than 24 inch caliper, and 5:1 for designated outstanding specimen trees.*

Sec. 24-92. Tree Preservation plan site inspections

- (a) *The Planning Director or his designee shall inspect the sites subject to this ordinance prior to Certificate of Occupancy to determine compliance.*

(b) Upon approval of the Tree Preservation Plan and prior to any land disturbance permit being issued the developer shall arrange a meeting with the Planning Director or his designee to tag all trees over 24 inches identified in the plan to be preserved and to coordinate tree protection measures required by section 24-88. The Planning Director may waive this requirement upon finding that the development is less than 10 acres, and not subject to any proffers or conditions pertaining to tree preservation.

Sec. 24-88 93. Modification, substitution, transfer.

- (a) *Findings for acceptance of modifications, substitutions, or transfers.* The commission or planning director may modify, permit substitutions for any requirement of this section, or permit transfer of required landscaping on a site upon finding that:
- (1) Such requirement would not promote the intent of this section;
 - (2) The proposed site and landscape plan will satisfy the intent of this section and its landscape area requirements to at least an equivalent degree as compared to a plan that strictly complies with the minimum requirements of this section;
 - (3) The proposed site and landscape plan will not reduce the total amount of landscape area or will not reduce the overall landscape effects of the requirements of this section as compared to a plan that strictly complies with the minimum requirements of this section;
 - (4) Such modification, substitution or transfer shall have no additional adverse impact on adjacent properties or public areas; and
 - (5) The proposed site and landscape plan, as compared to a plan that strictly complies with the minimum requirements of this section, shall have no additional detrimental impacts on the orderly development or character of the area, adjacent properties, the environment, sound engineering or planning practice, Comprehensive Plan, or on achievement of the purposes of this section.
- (b) *Cases for modifications, substitutions, or transfers.* Requests for modifications, substitutions or transfers may be granted in the following cases:
- (1) The proposed landscape plan, by substitution of technique, design or materials of comparable quality, but differing from those required by this section, will achieve results which clearly satisfy the overall purposes of this section in a manner clearly equal to or exceeding the desired effects of the requirements of this section;
 - (2) The proposed landscape plan substantially preserves, enhances, integrates and complements existing trees and topography;
 - (3) Where, because of unusual size, topography, shape or location of the property or other unusual conditions, excluding the proprietary interests of the developer, strict application of the requirements of this section would result in significant degradation of the site or adjacent properties;
 - (4) The proposed landscape design or materials involve a readily discernible theme, historic or otherwise, or complements an architectural style or design;

- (5) Where it is necessary to allow the subdivision of property on which commercial or industrial units will be for sale, for sale in condominium or for lease, and such units are constructed as part of a multiunit structure in which the units share common walls or are part of a multiple-structure development, and the entire development has been planned and designed as a cohesive, coordinated unit under a single master plan; or
- (6) Where transfers of required landscape areas to other areas on a site are necessary to satisfy other purposes of this section, including transfers to increase screening or preserve existing trees, provided such transfers do not reduce overall landscape requirements for a development.
- (c) *Process for requesting modifications, substitutions, or transfers.* Requests for modifications, substitutions or transfers shall be filed in writing with the planning director and shall identify the specific requirement of this section and the reasons and justifications for such request together with the proposed alternative. Depending upon whether the landscape plan is subject to commission or administrative review, the commission or planning director shall approve, deny, conditionally approve or defer action on such request and shall include a written statement certifying the above findings. The commission or planning director may require the applicant to provide plans, documentation or other materials to substantiate these findings.

In the case of approvals or conditional approvals, this statement shall include a finding as to the public purpose served by such recommendations, particularly in regard to the purposes of this section. The planning director shall notify the applicant in writing as to the reasons for such action within 30 days of submittal of administrative plans meeting all applicable submittal criteria or within five working days of such decision by the commission.

Sec. 24-90 94. Size requirements for new plantings

Planted trees and shrubs shall conform to the minimum size requirements outlined in the following table.

Size Requirements for New Plantings		
Category	Type	Minimum Size at Planting
Trees	Deciduous Shade Tree (D)	Minimum Caliper is= 1.5".
	Evergreen (E)	If multi-stemmed, minimum height shall be 8-feet. If single-stemmed, minimum caliper shall be 1.25" with minimum height of 8-feet.
Ornamental Tree	Single-Stemmed (D) or (E)	8-feet in height.
	Low Growing Woody Plant having several permanent stems.	18" if evergreen. 22" if deciduous.
Caliper - The diameter of a tree trunk measured 6" above-ground for nursery stock.		

Sec. 24-91 95 Summary of definitions for trees and shrubs

Outlined below is a quick reference of the definitions for trees and shrubs. Please refer to section 24-2 for complete definitions of these terms.

Type	Character	Minimum Size
Specimen Tree	Free of disease and significant damage or which is notable by virtue of its outstanding size and quality for its particular species.	Diameter at breast height (DBH) is 24" or greater.
<i>Outstanding Specimen Tree</i>	<i>Free of disease and significant damage or which is notable by virtue of its outstanding size, form, shape, spread, and quality for its particular species as determined by the Planning Director or his Designee per the Outstanding Specimen Tree Designation Guidelines and Form.</i>	<i>Trees designated as outstanding specimens by the Planning Director or his Designee.</i>
Mature Tree	Free of disease and significant damage.	DBH is 8" or greater
Understory or Ornamental Tree	Trees that typically do not exceed a height of 40-feet at maturity. Understory are those trees typically found within a native plant community. Common understory examples include: Wax Myrtle, American Holly, and Dogwood. Examples of ornamental trees include Japanese Maple and Crape Myrtle.	
Overstory Tree	Trees that typically exceed a height of 40-feet at maturity. Common examples include: Loblolly Pine, Oaks, Red Maple, and London Plane Tree.	
Diameter at breast height (DBH) B The diameter of a tree trunk measured 4.5 feet from the ground.		

Sec. 24-92 96 Plant Material Standards

- (a) All required plantings shall conform with the most recent edition of *American Standard for Nursery Stock*, published by the American Association of Nurserymen, and shall be planted in accordance with the most recent edition of *Guidelines for Planting Landscape Trees and Planting and Care of Trees and Shrubs*, published by the Virginia Cooperative Extension Service.
- (b) Required planting materials shall be of a species that promotes the intent of this division and that is compatible with the proposed planting environment.

- (c) Transplanting for the purpose of achieving a larger size tree may be approved, provided it is done in accordance with accepted horticultural and silvicultural practices.

Sec. 24-93-97. Tree credits.

- (a) Existing viable trees, preserved on the site in accordance with the tree protection standards outlined in section 24-89 (b), may provide tree credits which shall reduce the number of new trees required to be installed.
- (b) The trees to be saved shall be clearly identified on the landscaping plan. The plan shall identify the general location, number, size, and type of trees proposed to be saved and the requested tree credits.
- (c) The amount of tree credit is outlined in the following chart.

Tree Credits	
Trees to be saved:	Tree Credits:
1 viable ornamental tree meeting the minimum size at planting as described in Section 24-90.*	1 planted ornamental tree.
3 viable trees meeting the minimum size at planting as described in section 24-90.*	1 planted ornamental tree.
1 viable mature tree.	2 planted trees.
1 viable specimen tree.	3 planted trees.
<i>1 viable outstanding specimen tree as approved by the Planning Director or his designee.</i>	<i>5 planted trees</i>
No credit shall be given for any trees that are not protected in full compliance with the tree protection standards listed in section 24-89(b).	
* The trees to be saved shall be “tagged” in the field and the planning director or his designee shall inspect the trees to determine which trees are eligible to receive credit. Only those trees which are healthy, of the minimum size noted above, and are of a suitable quality shall be deemed acceptable for receiving credit.	